90-1960

Supreme Court, U.S.
FILED
JUN 25 1991
OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1990

NO_____

CURTIS L. WRENN
P. O. Box 203
Fort Drum, NY 13603,

Petitioner.

vs

U. S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION, ET AL.,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

QUESTIONS PRESENTED FOR REVIEW

This is a case in which the respondents obtained dismissal of petitioner's claims at the pre-trial level. If this Court grants the petition for certiorari, it will have to decide whether the petitioner's rights, privileges and immunities were abridged by the lower courts' decisions. More specifically:

1. Whether the dismissal of the petitioner's FOIA claims, without examining the records compiled of him by the responsible federal agencies, violated his procedural due process and/or property right.

2. Whether the imposition of sanctions against the petitioner, allegedly because his FOIA claims were frivolous, without articulating the basis for his claims and/or stating specifically how it decided the appeal was frivolous, violated his rights under the First and Fourteenth Amendments.

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JURISDICTIONAL STATEMENT

The jurisdiction of this Court is invoked under Title 28, United States Code, Section 1254(1), 1651 and 1915.

Jurisdiction is also invoked under the Constitution and laws of the United States, including but not limited to the First, Fifth and Fourteenth Amendments and the Freedom of Information Act/Privacy Act, in that the decisions of the lower courts, if permitted to stand, will deprive the petitioner of procedural due process rights, right of freedom of speech and the right of access to information compiled of and about him by agencies of the USA.

The jurisdiction of this Court is also invoked to review the actions of the lower courts, in that they have rendered decisions which if not reversed by this Court will contravene prior decisions of the Court and will invalidate a Congressional intent. Also, the decisions are contrary to decisions of this Court and the other courts of appeals.

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Amendment I:

> Congress shall make no law ... abridging the freedom of speech ...; or the right of the people to peaceably ... to petition the Government for a redress of grievances.

United States Constitution, Amendment V:

> Nor shall any person ... be deprived of life, liberty, or property, without due process of law ...

United States Constitution, Amendment XIV:

> Nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

This case, which had its origin in the petitioner's requests for information, records and files compiled by federal agencies, presents an example of abuse of discretion by the lower courts. More specifically the petitioner:

1. Requested records and documents compiled of him by federal agencies, pursuant to the Freedom of Information Act (FOIA). The agencies refused to provide the records and information requested.

2. After exhausting the required FOIA administrative remedies, filed the complaint at App F as provided by 5 USC 552(a)(4)(B), and after the district court did not comply with 5 USC 552(a)(4)(B) filed his motion for summary judgment (App G).

3. Appealed the decision of the district court which granted judgment in favor of the defendants (App H, I).

4. Presents this petition for writ of certiorari as part of his continuing efforts to bring to an end the practice of the lower courts of depriving him of the rights, privileges and immunitites secured by the Constitution and laws of the United States. In the case at bar, the courts have either issued threats against the petitioner or have imposed sanctions on him for asking for records, documents and things which were compiled of him by various federal agencies. Despite the fine and threats, the lower courts have refused to articulate the basis for deciding that the petitioner's FOIA claims were somewhow frivolous. This is particularly pertinent because all the petitioner has requested are records compiled of him by the responsible federal agencies.

REASONS FOR GRANTING WRIT

1. The denial of petitioner's FOIA claims contravenes the Constitution and laws of the United States including, but not limited to, the First, Fifth and Fourteenth Amendments and the Congressional intent of the Freedom of Information Act (5 USC 552). Moreover, the issuance of threats and the imposition of sanctions in the form of attorney fees, are in conflict with the civil Rights Attorney's Fees Award Act and decisions of this Court.

2. The district court dismissed appellant's FOIA claims allegedly because he did not state a cause of action. The FOIA requests submitted by the petitioner to various federal agencies were for records, documents and files compiled of him by those agencies. The complaint in the district court was filed pursuant to 5 USC 552(a)(4)(B) which provides in relevant parts that: "In such a case the court shall determine the matter de novo, and may

examine the contents of such agency records in camera to determine whether such records or any part thereof shall be witheld ..." On the basis of these provisions, the petitioner submits he had "stated a cause of action." In a similar case this Court held that "a cause of action is a form of "property" that the state may not take away without due process of law." See Logan v. Zimmerman Brush Co., 455 U.S. 422, 428, 102 S.Ct. 1148, 1153 71 L.Ed.2d 265 (1982).

3. The decision of the district court was appealed to the court of appeals. The latter dismissed the appeal and imposed sanctions on the petitioner, because allegedly the appeal was frivolous.

4. The court of appeals imposed a $500.00 fine on the petitioner, allegedly because the appeal was frivolous. The court cited no facts, or lack thereof, or any information which it used as a basis for deciding the appeal was frivolous. The decision is in conflict with Doe v. Busbee,

(CA GA 1982), 684 F.2d 1375, where the court held that "Attorney's fees may be awarded under Civil Rights Attorney's Fees Award to prevailing defendants only if plaintiff's claim was frivolous, unreasonable or without foundation." This Court similarly held in Christianburg Garment Co. v. EEOC. 434 U.S. 412, 423, 98 S.Ct. 694, 701, 54 L.Ed.2d 648 (1978), that such an award (attorney's fees) must be based on a finding that the plaintiff's charge was "frivolous, unreasonable or without foundation." The court of appeals render no "findings" in the case while imposing the fine against the petitioner allegedly for filing a "frivolous appeal."

5. The imposition of sanctions by the court of appeals was not made on the basis of any facts and/or pleadings but rather was the result of a pattern of unwarranted adverse action against the petitioner by the court of appeals. It is unrefuted that the petitioner requested information under the

FOIA, exhausted the required administrative remedies, and filed the complaint at App F. The court of appeals offered no explanation for the sanctions and/or reason for denying the appeal, other than to say the appeal was frivolous. In order to be awarded attorney's fees under 42 USC 1988, the defendant would have to succeed on "any significant issue." This did not occur in this case because the claims were dismissed at the pre-trial level, allegedly because the petitioner's FOIA claims did not state a cause of action. In the absence of the defendants succeeding on any significant issue, attorney's fees should not have been awarded. See, e.g., State Teachers Assoc. v. Garland Independent School District, Sup Ct Case No 87-1759 (Mar 1989), Cert to 5th CA

6. The district court's decision (App H) to dismiss petitioner's FOIA claims without examining the contents of the agencies' records is contrary to decisions

of this court. Although the the law places the burden on the agency to sustain its action in denying the records under the FOIA, the court did not require any such showing. Instead the court dismissed the petitioner's FOIA claims. The decision is contrary to this Court's decision in U. S. Dept. of Justice v. Reporters, Cert. to CA DC, Sup Ct Case No 87-1379 (Mar 1989) where the Court held "... the FOIA expressly places the burden "on the agency to sustain its action" and directs the district court to "determine the matter de novo." Such was not done in this case, instead of determining the matter de novo the courts went to great length to label the petitioner as the "wrongdoer" for requesting information under the FOIA.

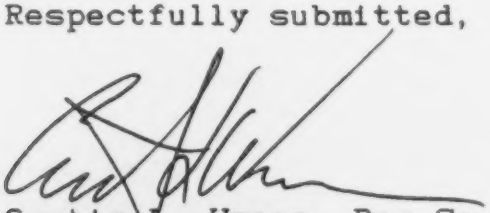
CONCLUSION

The foregoing facts and arguments demonstrate that the decisions of the Second Circuit Court of Appeals are in conflict with this Court and the other courts of appeals. Moreover, this case presents a clear example of how the Second Circuit has conducted a pattern and practice of depriving the petitioner of rights secured to him by the Constitution and laws of the United States, including, but not limited to, the First and Fourteenth Amendments and the FOIA. This Court is asked to bring to an end the continuing threats, imposition of sanctions and other forms of deprivation of constitutional rights by the Second Circuit.

Accordingly, the decisions should be reversed and the case remanded to the court of appeals with the specific requirements that a hearing be conducted to determine and outline specifically how it determined that this FOIA appeal was somehow frivolous.

The Court of Appeals should also be required to show and/or explain and/or justify the pattern of threats made against the petitioner in every other FOIA appeal which he submitted. The threats should either be justified on the basis of facts or the they should be discontinued.

Respectfully submitted,



Curtis L. Wrenn, Pro Se
P. O. Box 203
Fort Drum, NY 13603
Tel: (315(772-7817

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1990

NO_____

CURTIS L. WRENN
P. O. Box 203
Fort Drum, NY 13603,

Petitioner.

vs

U. S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION, ET AL.,

Respondents.

PETITIONER'S APPENDIXES

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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United States Court of Appeals
For The
Second Circuit

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the twentieth day of May one thousand nine hundred and ninety-one.

WRENN

v. DOCKET NUMBER

91-3006

U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION

A petition for rehearing containing a suggestion that the action be reheard in banc having been filed herein by appellant pro se, Curtis L. Wrenn.

Upon consideration by the panel that decided the appeal, it is

Ordered that said petition for rehearing is DENIED.

It is further noted that the suggestion for rehearing in banc has been transmitted to the judges of the court in regular active service and to any other judge that heard the appeal and that no such judge has requested that a vote be taken thereon.

/s/
ELAINE B. GOLDSMITH
Clerk

APPENDIX B
Page 1 of 2 Pages

United States Court of Appeals
For The
Second Circuit

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the first day of April one thousand nine hundred and ninety-one.

IN RE: CURTIS L. WRENN

91-3006

A motion having been made herein by the appellant pro se

for a writ of mandamus

Upon consideration thereof, it is

Ordered that said motion be and is hereby is denied.

RKW EVG JMW /s/illegible

/s/illegible

/s/illegible

APPENDIX C
Page 1 of 23 Pages

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

CURTIS L. WRENN
P. O. Box 203
Fort Drum, NY 13603,

Petitioner.

RE: Curtis L. Wrenn v. U.S. Equal Employment Opportunity Commission, Docket 89-CV-315, USDC ND NY; CCA 90-6097

PETITION FOR WRIT OF MANDAMUS

COMES NOW the petitioner to respectfully ask this Honorable Court, pursuant to Rule 21(c) of the Federal Rules of Appellate Procedure, to issue a Writ of Mandamus and an order directing the United States District Court for the Northern District of New York to reopen the above captioned case regarding the petitioner's claims against the EEOC. As grounds for this extraordinary request, the petitioner asks the court to consider the following:

1. This court's recent decision in Docket No 90-6089, November 16, 1990 where the court states the following at page 9 of its decision: "Wrenn was thus obliged to exhaust administrative proceedings

before filing a civil action under Title VII" ... and "We believe that Wrenn, having initiated administrative proceedings on his ADEA claim, was thus obliged to exhaust such proceedings before filing a civil action under the ADEA."

2. Since at least May 1978 the petitioner has been trying, without success, to have the EEOC comply with the provisions of Sec 706(b) of The EEOC Act which provides that "Whenever a charge is filed by or on behalf of a person claiming to be aggrieved, ..., alleging that an employer ... has engaged in an unlawful employment practice, the Commission ... shall make an investigation thereof."

3. The petitioner has experienced severe difficulties with the EEOC. More specifically, numerous charges of employment discrimination have been lost, willfully destroyed or not processed. As a proximate result, the petitioner has been denied certain rights and privileges.

4. In an attempt to have the EEOC enforce The EEOC Act by having the VA to process a charge of employment discrimination pending since November

1981, the petitioner on September 21, 1988 asked Chairman Thomas and Senator D'Amato to assist him in having the charge processed so that he could demonstrate that he had exhausted the required administrative remedies. Instead of responding in a positive fashion by indicating what action it would take, the EEOC retaliated against the petitioner by informing Senator D'Amoto that "Mr. Wrenn has filed approximately 326 charges ..." a clear violation of Sec 706(b) of The EEOC Act which provides that "Charges shall not be made public by the Commission." This is the second known EEOC violation.

5. In further support of this request to reopen the claims against the EEOC, the petitioner submits that the issues which he previously complained of against that agency, including but not limited to concerted action by it to deprive him of rights, privileges and immunities secured to all citizens of the United States, have not been resolved, but are continuing in nature. The primary problems which continue to plague the plaintiff is

the apparent willful unlawful destruction by the EEOC of this investigative files pertaining to charges of discrimination filed by the petitioner AFTER he files a request for a copy pursuant to the Freedom of Information Act (FOIA). In addition, charges are lost or mysteriously disappear. also, the petitioner has been denied his statutory Notice of Right to Sue. As a result of the actions and/or inactions of the EEOC the petitioner has been deprived of documents needed to pursue his claims in the federal courts. The court's attention is invited to the following exhibits, which are incorporated herein expressly by reference:

Exhibit 1 - File destroyed AFTER FOIA request was made and while the lawsuit is still pending. See Wrenn v. NYS OMH, 82 CV 3606 (CES) USDC SD NY.

Exhibit 2 - File destroyed AFTER FOIA request was made and while the lawsuit was still pending. See Wrenn v. Whitney M. Young, Jr. Health Center, et al., 85 CV 1096 CA Docket No 89-7449, March

30, 1990.

Exhibit 3 - Files destroyed apparently after the petitioner requested Senator D'Amoto to assist him AND after he filed his FOIA request.

Exhibit 4 - In response to petitioner's FOIA requests the EEOC has alleged that "we are unable to locate said charge file."

Exhibit 5 - correspondence to Senator d'Amoto; EEOC's retaliation alleging the plaintiff filed over 326 charges (during more than a ten year period in which he has been denied employment for over two thousand jobs and has since July 1, 1978 been deprived of employment in his chosen profession of hospital and health care administration); and petitioner's request for information under the FOIA concerning the 326 charges has been denied.

Exhibit 6 - Page 9 of Docket No. 90-6089, Wrenn v. VA. November 16, 1990.

Exhibit 7 - Petitioner's charge against the University Maryland alleging "institutionalized practice of paying Blacks and females less than white males ..." and "denial of due process". Page 5.

Exhibit 7A- EEOC's Determination on Appeal Petition where the EEOC states at page 3 "Since the Charging Party filed his charge more than a year after notice that he would be denied tenure and not received a new contract ..." The EEOC has denied the petitioner's FOIA request for the basis for this untrue statement. Also, the EEOC states on the same page that "Further, a letter from Charging Party to his former employer shows that he protested the action as retaliatory ..." Despite this

acknowledgement, the EEOC refused to provide the petitioner with a statement that he had exhausted the required administrative remedies in connection with his charge of retaliation.

Exhibit 7B- The EEOC's Determination which denied the petitioner's charge of retaliation.

Exhibit 7C- The USDC Order of Dismissal, as a result of the failure to act by the EEOC.

Exhibit 7D- The denial by the EEOC of information which would support the petitioner's claims in the federal courts. See esp page 2.

Exhibit 7E- The EEOC has denied petitioner the right to exhaust his administrative remedies.

Exhibit 8 - Two Examples of where the EEOC has refused the petitioner's request for a Notice of Right to Sue, thus

depriving him of his right to seek redress.

Exhibit 9 - The EEOC has denied the petitioner the opportunity to exhaust his required administrative remedies.

Exhibit 10- The EEOC's invasion of petitioner's privacy and violation of the Privacy Act by disclosing his charge filing activities WITHOUT his permission.

Exhibit 11- The EEOC's second invasion of petitioner's privacy and violation of the Privacy Act by the unauthorized disclosure of the petitioner's charge filing activities.

Exhibit 12- Petitioner's complaints against and about the actions and/or inactions of the EEOC.

Exhibit 13- The EEOC informing Senator Moynihan that it had instructed its staff not to respond to any more inquiries from or about Mr. Wrenn, and other refusals to assist him.

Exhibit 14- In response to the petitioner FOIA request and while his appeal was pending, the EEOC destroyed the file. The file was destroyed despite the fact the case was still pending in the federal courts. See page 14 where it is clear that the EEOC's policy is "case files that are a subject of a court action is preserved until the completion of such court action." See USDC ND NY 85 CV 1096 86 CV 916. See also CA Dockets 86-6025 and 89-7449. The court should also note that the district court denied his requests for discovery and thus he was deprived of documents to prosecute his case.

REASONS FOR GRANTING THE PETITION

I. STATEMENT OF THE FACTS:

1. The pertinent facts and/or decisions and/or actions and/or inactions by the EEOC are demonstrated by the incorporated exhibits.

2. The facts are also demonstrated by the complaint against the EEOC in Civil Action 89-CV-315. The facts of record show that the petitioner filed his complaint against the EEOC in an attempt to have that federal agency comply with Sec 706(b) of The EEOC Act and the FOIA. The case was dismissed allegedly because of a failure to state a cause of action. Petitioner appealed and the appeal was denied. In addition to denying the appeal the court imposed sanctions against the petitioner for $500.00 allegedly because the appeal was frivolous. The court did not discuss the case, the facts or the merits of the case. More importantly the court did not state the basis for its decision that the appeal was frivolous.

II. STATEMENT OF THE ISSUES:

1. Whether a cause of action is stated against

the EEOC when a complainant alleges that the agency has (1) refused to process his charges of employment discrimination against federal, public and private employers (Sec 706(b) of The EEOC Act); (2) invaded his privacy, in violation of the Privacy Act and The EEOC Act, by disclosing information to third parties regarding the petitioner's charge filing activities; and (3) that the agency refused to provide information requested under the FOIA.

2. Whether the pattern and practices of the EEOC against petitioner in denying him the right to seek legal redress against employers who have denied him equal employment opportunity, constitute a "cause of action" within the meaning of Rule 12b(6) of the FRCP and grant jurisdiction under Rule 12b(2).

3. Whether the district court abused its discretion when it dismissed the petitioner's claims against the EEOC.

4. Whether this court abused its discretion when it denied the petitioner's appeal. Also, whether the court abused its discretion when it

imposed sanctions in the form of attorney fees on the petitioner for filing the appeal, without discussing the basis for saying the appeal was frivolous.

III. LEGAL ARGUMENTS FOR GRANTING THE PETITION:

1. This court correctly noted in Docket No. 90-6089 (Ex 6) that a complainant is required to exhaust his administrative remedies before pursuing a claim in the district court. The court, however, failed to mention the cases previously before it involving this petitioner in which the responsible federal agency refused to process administrative complaints, and thus depriving the petitioner of the right to pursue his claims in the district court. A few examples:

a. 85-CV-1096 (CA Docket Nos 86-6025 and 89-7449) where this court upheld the district court's refusal to direct the EEOC and DHHS to process the petitioner's charges of discrimination, and thus depriving him of the opportunity to demonstrate that he had exhausted the required administrative remedies. This case is also noted

for the courts' refusal to require DHHS to provide information requested under the FOIA. The case is also noted for the fact that the district court also denied the petitioner's discovery requests, thus depriving him of the opportunity to properly prosecute his case.

b. CA Docket No 87-6157 where this court upheld the district court's determination that it did not have venue and/or jurisdiction to rule on the merits of the petitioner's FOIA request and/or his request to have DHHS process his charges of discrimination. This court also upheld the district court's decision to impose sanction and award attorney fees allegedly because the petitioner claims were attempts to harass the defendants.

c. 86-CV-916 (CA Docket No 87-6121), where this court upheld the district court's denial of petitioner's request for information regarding a criminal allegation made against him by DHHS. Despite repeated requests by the petitioner EVERY court considering the FOIA has steadfastly refused to even consider the merits of the FOIA request.

This court also upheld the district court's refusal to direct DHHS to investigate the petitioner's charges so he could demonstrate that he exhausted the required Title VI administrative remedies. See Exhibit 7C. See also Docket No 87-6157.

2. The foregoing is submitted to demonstrate that this court's action in Docket No 90-6089 is another example of the court taking unwarranted punitive action against the petitioner for attempting to obtain redress for the many wrongs visited upon him by the EEOC and other federal agencies, and private and public employers since at least July 1978. The case at bar is noted for the fact that the district court denied sanctions and this court, apparently on its own motion, imposed sanctions WITHOUT discussing how the petitioner's request for the EEOC to do what Congress has mandated it to do is somehow a frivolous claim.

3. The EEOC's refusal to process the petitioner's charges and/or to provide him with the statutory Notice of Right to Sue should not be condoned by this court. The EEOC has demonstrated a

clear pattern or practice of denying the petitioner the right to seek legal redress by, among other things, implementing regulations and/or practices to single out the petitioner for disparate treatment, such as not providing him with the requested Notice of Right to Sue in cases filed more than 180 days before the request was made. Petitioner submits that the action and/or inaction of the EEOC is a clear violation of the Civil Rights Act of 1964, as amended. See, e.g., Mohasco Corporation v. Silver, 447 US 807, 65 L Ed 532, 100 S Ct 2486 (1980) where the court noted: "The Equal Employment Opportunity Commission cannot adopt regulations that are inconsistent with its statutory mandate under the Civil Rights Act of 1964 ..." See also Exhibits 1,2,7A,7B,7D,7E, and 8-10.

4. The disclosure by the EEOC of petitioner's charge filings to third parties (Exhibits 10 and 11) constitute a clear invasion of the petitioner's privacy AND a clear violation of the Privacy Act and The EEOC Act. Thus, these disclosures present a serious question regarding whether or not in the

absence of a subpoena duces tecum the EEOC violated and/or unlawfully invaded the plaintiff's privacy by disclosing unsolicited information to Senator D'Amoto and others, which it neither was requested to disclose nor had a right or authority to disclose. See, e.g., 5 USC 552a(b) which precludes the disclosure of any records in a system of records without the written consent of the subject of the records. See, also Britt v. Naval Investigative Service (CA 3, September 14, 1989) No 88-1710, 58 LW 1051; O'Donnell v. U.S. (CA 3, December 15, 1989), No 89-1363, 58 LW 2384; and Whalen v. Roe, 429 U.S. 589 (1977).

5. The exhibits in this case clearly demonstrate that the EEOC has contravened the constitutional guarantee of equal treatment, in that charges filed by the petitioner are not processed in the same manner as those of other individual complainants. In addition, the petitioner's FOIA requests are handled differently by the various EEOC District Offices AND different from how other individual requests are handled. See, e.g., Young

v. Pierce (DC Tex 1982), 544 F. Supp 1010 where the court held "To extent a plaintiff asserts that federal agency is violating terms of a federal statute by abdicating affirmative duty to eliminate discrimination, action is properly brought against agency; in such circumstance, agency is a partner in discrimination, and may be held responsible for such complicity." Accordingly, the facts in this case demonstrate that the EEOC has violated the Administrative Procedure Act by refusing to timely process complaints of unlawful discrimination filed by the petitioner (Exhibits 7-7E, 8 and 9). See, e.g., Doran v. Salem Inn, Inc. 422 US 922, 931, 95 S Ct 2561, 45 L ed2d 648 (1975).

6. The denial by the EEOC of information under the FOIA, esp. Exhibits 7-7E, is a clear violation of the FOIA (5 USC 552(a)(4)B). The EEOC in the Maryland's case made unsupported disparaging remarks and statements concerning the petitioner without any facts to support its allegation. This court is being asked not to continue condoning the withholding of information from the petitioner by

the EEOC, but to "determine the matter de novo" and determine WHY the EEOC and other federal agencies have covered up their activities against the petitioner by denying him the information he would need to prosecute actions against them and others. See, e.g., U. S. Dept. of Justice v. Reporters, Cert. to CA DC, Sup Ct Case No 87-1379 (Mar 1989). The questions the court is being asked to decide: (1) whether the EEOC had information in the Maryland case to support its statements at page 2 of Exhibit 7D, (2) if the EEOC had such information, then was it unlawfully withheld from the petitioner, and (3) if the EEOC did not have such information, why did it make the unsupported allegations, and more importantly why it has not just acknowledged that the statements were unsupported. Also, the court is being asked to determine, under the FOIA, the disposition of the petitioner's retaliation claim by the EEOC in the Maryland case.

7. This court's previous decision in Docket No 90-6097, especially its imposition of sanctions against the petitioner, should be revoked. The

court cited no facts and/or acts by the petitioner which could characterize his civil action against the EEOC as "frivolous" and/or without foundation. Moreover, the court did not cite any facts or examples to show that the petitioner's complaint against the EEOC was not grounded in fact or was not legally tenable, or that the complaint was baseless. All the court did was state the complaint was "frivolous" without citing ANY facts or basis for its statement. The petitioner is not aware of any case involving him that this court has rendered a decision, pursuant to Federal Rules of appellate Procedure 38, that it had "determined that the appeal was frivolous." Moreover, the court has not refuted the petitioner's contention that his complaint against the EEOC was "well grounded in fact and is warranted by existing law or a good faith argument for the extension, modifications, or reversal of existing law, ..." which is the heart of Rule 11. The petitioner submits that he has fully complied with the central purpose and duty imposed by Rule 11, in that he has "conducted a reasonable

inquiry and has determined that any papers filed with the court are well-grounded in fact, legally tenable, and "not interposed for any improper purpose". See, e.g., Cooter & Gell v Hartmarx Corp., US Sup Ct Docket No 88-275, decided June 11, 1990. The court is asked to review the Exhibits and determine whether this lawsuit was initiated AFTER conducting reasonable inquiry. Other additional reasons this court should reconsider its decision:

a. An award of attorney's fees to the defendants in this case is not justified, primarily because there has been no showing by this court, the district court or the defendants that the petitioner's claim "was frivolous, unreasonable, or groundless, or that the plaintiff continued to litigate after it clearly became so." Christiansburg Garment Co. v. EEOC, 434 U.S. 412, 423, 98 s. Ct. 694, 701, 54 L.Ed.2d 648 (1978).

b. Rule 11 provides in pertinent parts that:

> "The signature of an attorney or party constitute a certificate by the signer that the signer has read the pleading, motion, or other paper; that to the best of the signer's knowledge,

> information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law OR (emphasis added) a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation."

Accordingly, the decision should be reversed in this case in the same manner and for reasons similar to the Supreme Court's reversal of another Rule 11 sanction decision of this court. See, Pavelic & LeFlore v. Marvel Entertainment Group, No 88-791, The United States Law Week, vol 58, No. 22 58 LW 4038-4040.

8. should the court not be inclined to reopen this case and/or to revoke its earlier decision, the petitioner respectfully ask the court to "discuss the specific information that forms the basis of the plaintiff's suit and explain why this information does not constitute adequate factual substance for the commencement of a nonfrivolous case ...". See, e.g., Hermes v. Hein, 742 F.2d 350, 357 (7th Cir. 1984).

CONCLUSION

Based upon the foregoing the court should reopen this case and review the activities of the EEOC. The facts in the case demonstrate that the petitioner has submitted more than adequate evidence to show that the EEOC has denied him, among other things, the equal protection afforded by Title VII because of his race and because he has opposed employment practices made unlawful by the Constitution and laws of the United States, and because he has complained of the manner in which the EEOC processes and/or refused to process his charges of employment discrimination. See, e.g., A & A Concrete, Inc. v. White Mountain Apache Tribe (CA Ariz 1982), 676 F.2d 1330.

Respectfully submitted,

/s/
Curtis L. Wrenn, Pro Se
P.O. Box 203
Fort Drum, NY 13603
Tel: (315) 772-6102

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Petition for Writ of Mandamus was mailed to Hon. Con. G.

Cholakis, United States District Judge, 445 Broadway, Albany, NY 12207, and the United States Attorney, 445 Broadway, Albany, NY 12207, this 12th day of January, 1991, via U. S. mail postage prepaid.

/s/Curtis L. Wrenn

APPENDIX D
Page 1 of 3 Pages

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

IN RE: CURTIS L. WRENN

91-3006

PETITION FOR REHEARING AND/OR IN BANC CONSIDERATION

COMES NOW the petitioner to ask the court to reconsider its decision of April 1, 1991, on the grounds that the court has misapprehended the facts in the case and/or misapplied the laws governing the granting and/or denial of information under the FOIA/PA, and/or intentionally denied the petition for writ of mandamus because of the petitioner's race (Negroid) and/or in retaliation for his previous appeals.

This court has demonstrated a clear pattern or practice of denying EVERY request for information under the FOIA/PA submitted by this petitioner WITHOUT providing ANY explanation for its action. That is, this is one of at least four requests for information under the FOIA/PA which this court has denied without providing the basis for its denial.

The court's action in this case demonstrates a blatant malicious denial of petitioner's rights under the constitution and laws of the United States SOLELY because he is a Negroid person who exercised his First Amendment rights. This is supported by the fact that this court denied the petition for writ of mandamus BEFORE it received it. Exhibit 1 shows that the petition was mailed Mar 30, 1991.

This is at least the third time this court has denied an appeal of this petitioner while not having before it the pleading submitted by him. See Docket No 87-6157, a case in which the Clerk returned the petitioner's Brief AND his Reply Brief WITHOUT offering ANY explanation for the return. The court later denied the appeal SOLELY on the basis of the Brief of the Appellees.

In summary, the continuing unlawful action of this, or ANY other court, to deny the petitioner information under the FOIA/PA should not be condoned. The denials of the petitioner's requests under the FOIA not only violate 5 USC 552(a) but more importantly the decisions convene decisions of

the Supreme Court. See, e.g., U.S. Dept. of Justice v. Reporters, Cert. to CA DC, Sup Ct Case No 87-1379 (Mar 1989).

Respectfully submitted,

/s/
Curtis L. Wrenn, Pro Se
P.O. Box 203
Fort Drum, NY 13603
Tel: (315) 772-4025

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was mailed to Judge Cholakis and the U. S. Attorney, 445 Broadway, Albany, NY 12207, this 4th day of April, 1991.

/s/Curtis L. Wrenn

APPENDIX E
Page 1 of 3 Pages

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

CURTIS L. WRENN
P. O. Box 203
Fort Drum, NY 13603. Docket No 91-3006

Petitioner

PETITION FOR REINSTATEMENT

COMES NOW the petitioner to petition the court to reinstate the above captioned case. The court previously dismissed this FOIA action on the grounds that the petitioner and failed to pay a $500.00 fine levied by the court in another FOIA action, namely Curtis L. Wrenn v. United States, No 90-6025. The latter concerns a claim for information under the FOIA filed against the EEOC. The case at bar is the result of a petition for writ of mandamus in which the petitioner has asked the court to review the continuing denial of information, documents and things by the EEOC under the FOIA, especially the denial of information pertaining to the University of Maryland Hospital, Baltimore (Exhibit 7D of the petition for writ of mandamus).

The requested information at Exhibit 7D is needed for a trial scheduled July 15, 1991 against the University of Maryland Hospital. See Exhibit 2. (The maryland Case is the origin of petitioner's troubles in that it was the first charge of discrimination he filed with ANY agency. Since filing that charge in March 1978, the petitioner has been denied employment in his chosen profession of hospital and health care administration by EVERY employer which he made application in response to advertisements which the employer announced that it was seeking applicants with his qualifications. Moreover, the petitioner has now become the "wrongdoer" according to the action of this court, instead of being a victim of discrimination and denial of the rights, privileges and immunities secured to citizens by the constitution and laws of the United States).

The information at Exhibits 1 and 3 demonstrate that the requirement of the court has been met. WHEREFORE, the petitioner prays this case will be reinstated. Moreover, the petitioner asks that the

case be in every way expedited, and that if at all possible the court will render a decision prior to the trial scheduled July 15, 1991 in the Maryland District Court. The information requested is essential for the plaintiff to prosecute the case which has been pending since 1982.

Respectfully submitted,

/s/
Curtis L. Wrenn, Pro Se
P. O. Box 203
Fort Drum, NY 13603
Tel: (315) 772-4025

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

CURTIS L. WRENN
P. O. Box 203
Fort Drum, NY 13603,

89-CV-315

Plaintiff,

vs

ADMINISTRATOR
VETERANS ADMINISTRATION
810 Vermont Avenue, NW
Washington, D.C. 20430

-and-

ATTORNEY GENERAL OF THE UNITED STATES
DEPARTMENT OF JUSTICE
10th and Pennsylvania Avenue, NW
Washington, D.C. 20530

-and-

CHAIRMAN
U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
2401 E Street, NE
Washington, D.C. 20507

-and-

SECRETARY
U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES
200 Independence Avenue, SW
Washington, D. C. 20201,

Defendants.

COMPLAINT

This is a complaint in equity for injunctive and preliminary relief. The ground for this complaint is that the defendants have conspired by lawful and unlawful means to deprive the plaintiff of rights, privileges and immunities secured to him by the Constitution and laws of the United States, including but not limited to the First and Fourteenth Amendments, and The Equal Employment Opportunity Act and the Freedom of Information Act.

JURISDICTION

1. The Jurisdiction of this Court is invoked pursuant to the First and Fourteenth Amendments to the Constitution of the United States, in that the plaintiff has been deprived of his First Amendment right to oppose employment practices which he perceives to be unlawful and has been falsely accused of criminal activities without the benefit of due process.

2. The jurisdiction of this Court is also invoked pursuant to the Freedom of Information Act (5 USC 552) (FOIA), this being an action in which

the plaintiff has been denied information, documents and things which he requested under that Act. More specifically, the plaintiff submitted timely requests to the federal agencies herein named as defendants and his requests were denied.

CLAIM

1. The plaintiff's complaint against the named defendants consists of the following incorporated exhibits:

A - 88-11-FOIA-131-BA. Denial of documents and things which support the EEOC's allegation that it did not have jurisdiction to investigate the three charges at issue.

B - 88-12-FOIA-147-BA. The denial of documents and things which the EEOC alleged used to state that "... he (the plaintiff in this case) filed his charge after his employment with Respondent ceased" and "... we find the charge untimely in regard to the issue of denial of tenure and non-renewal of contract."

C - 88-10-FOIA-280-NY. The denial of documents and things which support the

Administrative Law Judge's statement "Since the offer of full relief was certified and offered by Dr. Graninger."

D - EEOC Charge No 021855170. The denial of documents and things which were used as a basis for the EEOC's refusal to investigate this charge as is required by Section 706(b) of the Equal Employment Opportunity Act.

E - 88-11-FOIA-217. The denial of documents and things pertaining to the status and/or disposition of 326 charges which allegedly were filed by the plaintiff with the EEOC. The plaintiff has been trying since at least May 24, 1978 to have the EEOC process his charges of employment discrimination against public and private employers.

F - Case #85-552. The denial of documents and things by DHHS concerning three specific charges of discrimination AND DHHS's continuing refusal to process plaintiff's charges despite the requirement of Title VI.

G - Case No 86-279. The denial of documents

and things by DHHS concerning an investigation of the plaintiff by the Office of the Inspector General.

H - Case No 86-594(DHHS) and Appeal No 86-1619. Denial of documents and things concerning an allegation made by DHHS to the FBI that plaintiff stole government property.

I - FOIA 86-1003. The denial of information regarding processing plaintiff's civil conspiracy complaint by the Department of Justice.

J - FOIA Requests. The denial of information by VA concerning applications for employment which the plaintiff has submitted to various VA offices.

2. the exhibits indicate that the defendants have conspired among themselves and with public and private employers to deny plaintiff equal employment opportunity and the right to seek legal redress against those who have discriminated against him, because of his race (Negroid), age (date of birth February 14, 1930) and retaliation (for the plaintiff's opposition to employment practices made unlawful by the Constitution and laws of the United

States. The defendants have covered up their conspiracy by denying the plaintiff access to essential information.

3. Moreover, the defendants have caused the plaintiff great economic and psychological harm by their tactics of subjecting him to great costs in time and money, and by alleging that he: (1) is a criminal (extortion and theft), and (2) that he is a litigious person who files baseless complaint, all in an attempt to prevent the plaintiff's employment in his chosen profession of hospital and health care administration.

4. As a proximate result of the actions and/or inactions of the defendants, the plaintiff has been unable to obtain employment in his chosen profession. More importantly he has been unable to obtain legal redress against those who have discriminated against him.

PRAYER FOR RELIEF

WHEREFORE, the plaintiff prays the Court will grant him preliminary relief and order the defendants to immediately provide him the information, documents

and things which he requested under the FOIA. Plaintiff also prays the Court will grant him additional relief as the Court deems just considering the circumstances of this case, including but not limited to costs and damages. Plaintiff respectfully submits for the Court's consideration that the acts herein complained of were intentionally and maliciously undertaken to stigmatize, libel and slander him so as to prevent his employment at to discourage him and others from filing complaints in connection with employment discrimination.

Respectfully submitted,

/s/
Curtis L. Wrenn, Pro Se
P.O. Box 203
Fort Drum, NY 13603
Tel: (315) 772-4021

DATED: February 20, 1989

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

CURTIS L. WRENN,

Plaintiff,

vs

Civil Action
89-CV-315

SECRETARY, DEPARTMENT OF
VETERANS AFFAIRS, et al.,

JUDGE CHOLAKIS

Defendants.

NOTICE OF MOTION

PLEASE TAKE NOTICE that upon the annexed affirmation of Curtis L. Wrenn, affirmed May 29, 1989, and upon the complaint here, plaintiff will move this Court, Judge Cholakis, U.S.D.J. in the United States Courthouse, Albany, New York on the 7th Day of July 1989, at 9:30 AM, or as soon thereafter as counsel can be heard, to grant him summary judgment, pursuant to Rule 56(a) of the Federal Rules of Civil Procedure (FRCP), and for preliminary injunctive relief, pursuant to Rule 65(d) of FRCP. A memorandum of support is included.

Respectfully submitted,

/s/
Curtis L. Wrenn, Pro Se

MEMORANDUM IN SUPPORT

I. PLAINTIFF'S STATEMENT OF MATERIAL FACTS WHICH THERE ARE NO GENUINE ISSUES

1. During the past eleven years the plaintiff has submitted applications for and been denied more than 2500 positions by public and private employers. Believing in some cases he was denied employment because of impermissible factors, the plaintiff has filed charges and other administrative actions with the defendants named herein.

2. The defendants have not only failed to take the requested action, but more importantly the plaintiff has been denied information requested pursuant to the Freedom of Information Act (FOIA).

II. PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF HIS MOTION FOR SUMMARY JUDGMENT AND PRELIMINARY INJUNCTIVE RELIEF

1. This is a civil action instituted by the plaintiff against the defendants under the FOIA. The gravamen of plaintiff's claim alleges a violation of the FOIA, in that the plaintiff was denied information concerning the concerted action of the defendants to aid and abet public and private employers by, among other things, refusing to

enforce a mandate of Congress, i.e., The Equal Employment Opportunity Act.

2. This motion is made on the basis of the facts of record as submitted to the defendants and the Court in plaintiff's complaint. Plaintiff submits that on the basis of the complaint and incorporated exhibits, he is entitled to summary judgment and preliminary injunctive relief as a matter of law.

3. In this case at bar it is sufficient that the evidence of record, in the form of plaintiff's exhibits which demonstrate his repeated FOIA requests and the subsequent denials by the defendants, demonstrates that no material dispute exists. Therefore, summary judgment should be granted as a matter of law. See, e.g., Celotex Corp. v. Catrett (1986) 106 S Ct 2548.

4. Preliminary injunction is warranted in this case because of the irreparable harm to the plaintiff resulting from the defendants' continuing efforts to stigmatize and defame him, and their efforts to aid and abet private and public employers

against the plaintiff by, among other things: withholding evidence of their concerted actions against him be refusing to provide him information under the FOIA, and by refusing to timely process administrative actions filed by him, as required by the Administrative Procedures Act. See, e.g., Doran v. Salem Inn, Inc. (1975) 422 US 922, 931, 95 S Ct 2561, 45 L ed2d 648.

5. Should this Court not consider the irreparable harm to the plaintiff as a basis for granting the preliminary injunction, the court is respectfully requested to grant the relief on the basis that the relief is expressly authorized by statute and that the statutory conditions have been satisfied. That is, the plaintiff has exhausted the required statutory administrative remedies. See, e.g., South Central Bell Tel. Co. v. Louisiana Pub. Serv. Comm. (CA 5th, 1984) 744 F2d 1107.

WHEREFORE, plaintiff prays that his motion will be granted and that the defendants be ordered to:

1. Produce the requested documents
2. Cease and desist their concerted action

against the plaintiff.

3. Process any and all administrative claims and/complaints submitted by the plaintiff in the SAME manner as they would process such claims for any other citizen.

Respectfully submitted,

/s/
Curtis L. Wrenn, Pro Se
P.O. Box 203
Fort Drum, NY 13603
Tel: (315) 772-4021

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was mailed to U. S. Attorney, U. S. Post Office & Courthouse, Albany, NY 12201, this 30th day of May, 1989, via U.S. mail, postage prepaid.

/s/Curtis L. Wrenn

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

CURTIS L. WRENN,

Plaintiff,

v, ORDER

ADMINISTRATOR,
VETERANS ADMINISTRATION, et, al., Civil No.
Defendants. 89-CV-315
(Hon. Con. G.
Cholakis)

Appearances:

HONORABLE FREDERICK J. SCULLIN, JR.
UNITED STATES ATTORNEY — Barbara D.
Northern District of New York — Cottrell
James T. Foley U.S. Courthouse — Assistant
445 Broadway - Room 231 — U.S. Attorney
Albany, New York 12207 — of Counsel

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
1801 L Street, N.W. — Richard E.
Washington, D.C. 20507 — Dunlop, Esq.
P.O. Box 1691 — of Counsel
Albany, New York 12201

HONORABLE CON. G. CHOLAKIS
United States District Judge

Defendants having moved by their attorney,

Frederick J. Scullin, Jr., United States Attorney

for the Northern District of New York, Barbara D.

Cottrell, Assistant United States Attorney, of counsel, for an order dismissing the above-captioned action pursuant to Rules 12(b)(1) and 12(b)(6), Federal Rules of Civil Procedure, defendant Equal Employment Opportunity Commission (hereinafter "EEOC") having moved for an order granting partial summary judgment and partial dismissal, and for an order providing injunctive relief and imposing sanctions, counsel for the United States and the Equal Employment Opportunity Commission having appeared and waived oral argument in this matter, and due consideration having been given to the papers before the Court on submission by all parties, it is hereby,

ORDERED, that plaintiff's motion for summary judgment and partial dismissal be, and hereby is DENIED; it is further

ORDERED, that defendant EEOC's motion for partial summary judgment and partial dismissal be, and hereby is GRANTED; it is further

ORDERED, that defendant EEOC's motion for injunctive relief and the imposition of sanctions

be, and hereby is DENIED.

Dated: Feb 13, 1990
Albany, New York

/s/Con. G. Cholakis
HON. CON. G. CHOLAKIS
UNITED STATES
DISTRICT JUDGE

APPENDIX I
Page 1 of 6 Pages

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

CURTIS L. WRENN,

Plaintiff-Appellant,

vs

Docket No.
90-6097

SECRETARY, DEPARTMENT OF VETERANS AFFAIRS, et. al.,

Defendants-Appellees.

PLAINTIFF-APPELLANT'S APPEAL MEMORANDUM

COMES NOW THE PLAINTIFF-APPELLANT and appeals the decision of the United States District Court for the Northern District of New York of February 13, 1990. This memorandum of appeals is made on the basis that the district court (1) abused its discretion, (2) misinterpreted the facts in this case, and (3) misapplied the laws governing the granting and/or denial of information under The Freedom of Information Act (As Amended) 1986,

The following cases are related to the action herein complained of: Docket Nos: 87-6157/87-6199; 88-6037; 87-6121; 89-3043; 89-3045; and 90-6019.

A memorandum in support is submitted.

Respectfully submitted,

/s/
Curtis L. Wrenn, Pro Se

MEMORANDUM IN SUPPORT

I. BACKGROUND:

1. The case concerns plaintiff-appellant's continuing efforts to obtain information from the respondents under the provision of the Freedom of Information Act (As Amended) 1986. The case was filed in the district court AFTER the appellant exhausted and/or attempted to exhaust the required administrative remedies. See Exhibit #3.

2. The plaintiff filed a motion for summary judgment in the district court (Exhibit 3). Apparently in response to that motion the Defendant EEOC filed a motion for dismissal pursuant to Rule 12(b)(1) (lack of jurisdiction over the subject matter) and Rule 12(b)(6) (failure to state a claim upon which relief can be granted), of the Federal Rules of Civil Procedure.

3. The district court denied plaintiff's

motion for summary judgment and granted the Defendant EEOC's motion for dismissal. See Exhibit #1.

II. REASONS FOR GRANTING THE APPEAL:

1. To obtain relief under The Freedom of Information Act (5 USC 552), a plaintiff must establish (1) that he submitted a request to the agency for the information at issue and (2) that the agency failed to provide the requested information. If these two factors are satisfied, the plaintiff is entitled to file a complaint in the appropriate "district court of the United States in the district in which the complainant resides ..." (Exhibit #4).

2. Plaintiff, after exhausting the required administrative remedies, filed his complaint in the district court. The court dismissed the complaint allegedly because it did not have jurisdiction and because allegedly the plaintiff did not state a cause of action.

3. This Court has authority to review the district court's actions under the abuse of discretion standard. See, e.g., Albermarle Paper

Co. v. Moody, 422 U.s. 405, 424 - 25 (1975). This appeal presents this court with an issue of first impression for this Circuit - whether and under what circumstances a district court has jurisdiction to review de novo a FOIA claim under Title 5 USC 552 (a)(4)B.

4. Appellant submits that the district court had jurisdiction under 5 USC 552(a)(4)B, and that the allegation that the court did not have jurisdiction under Rule 12(b)(1), FRCP, is clearly erroneous. Moreover, the court abused its discretion when it decided that the plaintiff had not stated a claim which relief could be granted.

5. The relief which the appellant seeks is as stated in his complaint (Exhibit 2). That is, the appellant was seeking information from the EEOC pertaining to charges of discrimination which the EEOC (1) made false and/or misleading statements to employers and courts (Exhibit 6), (2) violated Section 706(b) of The EEOC Act when it refused to process charges of discrimination filed by him (Exhibit 7), and (3) information which the EEOC had

unlawfully disclosed to others without the appellant's permission and/or authorization, in violation of Section 706(b) (Exhibit 7).

6. Based on the foregoing, the district court had jurisdiction in this case. Also, the appellant stated a claim which relief could be granted. See Exhibit 5.

7. The FOIA (Title 5 USC 552(a)(4)B) expressly places the burden on the agency to sustain its action and directs the district court to determine the matter de novo. See, U.S. Department of Justice v. Reporters, Cert, to CA DC, Sup Ct CAse No 87-1379 (Mar 1989).

CONCLUSION

This case should be remanded to the district court with instructions that this case be heard de novo without further delay. The district court's action should not be condoned by this Court, in that the decision of the former is clearly erroneous and a clear abuse of discretion.

Respectfully,

/s/
Curtis L. Wrenn, Pro Se
P.O. Box 203
Fort Drum, NY 13603
Tel: (315) 772-7817

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was mailed to Barbara D. Cotrell, Esq., James T. Foley U.S. courthouse, 445 Broadway, Room 231, Albany, NY 12207, this 17th day of May, 1990, via U.S., mail, postage prepaid.

/s/Curtis L. Wrenn